

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

Case No. CV-14-00413-JPH

JOSEPH GEORGE SNIDER,

Plaintiff,

vs.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

BEFORE THE COURT are cross-motions for summary judgment. ECF No. 14, 16. Attorney Dana C. Madsen represents plaintiff (Snider). Special Assistant United States Attorney Ryan Lu represents defendant (Commissioner). The parties consented to proceed before a magistrate judge. ECF No. 7. On November 3, 2015, Snider replied. ECF No. 17. After reviewing the administrative record and the briefs filed by the parties, the court **grants** defendant's motion for summary judgment, ECF No. 16.

JURISDICTION

On November 22, 2013 Snider applied for supplemental security income (SSI)

1 benefits alleging disability (as amended, Tr. 67-68) beginning the same date (Tr.
2 136-42). The claims were denied initially and on reconsideration (Tr. 93-96, 103-
3 05). Administrative Law Judge (ALJ) Marie Palachuk held a hearing July 23, 2014.
4 Snider, represented by counsel, and medical and vocational experts testified (Tr.
5 43-72). On August 8, 2014, the ALJ issued an unfavorable decision (Tr. 20-31). The
6 Appeals Council denied review on October 24, 2014 (Tr. 1-3). Snider appealed
7 pursuant to 42 U.S.C. §§ 405(g) on December 23, 2014. ECF No. 1, 3.

8 **STATEMENT OF FACTS**

9 The facts appear in the administrative hearing transcript, the decisions below
10 and the parties' briefs. They are only briefly summarized here and throughout this
11 order as necessary to explain the Court's decision.

12 Snider was 40 years old at the hearing. He has a seventh grade education and
13 earned his GED in prison. He had problems with past jobs due to his inability to get
14 along with others. He has past relevant work as a landscape laborer. He lives with
15 his spouse and five children, ages six through fifteen. He does not drive and has
16 never had a license. He only leaves the house about five times a month. His
17 activities are playing with his children and watching television. He alleges mental
18 limitations (Tr. 57-59, 62, 65-66, 69).

19 **SEQUENTIAL EVALUATION PROCESS**

20 The Social Security Act (the Act) defines disability as the "inability to engage

1 in any substantial gainful activity by reason of any medically determinable physical
2 or mental impairment which can be expected to result in death or which has lasted or
3 can be expected to last for a continuous period of not less than twelve months.” 42
4 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also provides that a plaintiff shall
5 be determined to be under a disability only if any impairments are of such severity
6 that a plaintiff is not only unable to do previous work but cannot, considering
7 plaintiff’s age, education and work experiences, engage in any other substantial
8 work which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A),
9 1382c(a)(3)(B). Thus, the definition of disability consists of both medical and
10 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001).

11 The Commissioner has established a five-step sequential evaluation process
12 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520, 416.920. Step
13 one determines if the person is engaged in substantial gainful activities. If so,
14 benefits are denied. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If not, the
15 decision maker proceeds to step two, which determines whether plaintiff has a
16 medically severe impairment or combination of impairments. 20 C.F.R. §§
17 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

18 If plaintiff does not have a severe impairment or combination of impairments,
19 the disability claim is denied. If the impairment is severe, the evaluation proceeds to
20 the third step, which compares plaintiff’s impairment with a number of listed

1 impairments acknowledged by the Commissioner to be so severe as to preclude
2 substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii); 20
3 C.F.R. § 404 Subpt. P App. 1. If the impairment meets or equals one of the listed
4 impairments, plaintiff is conclusively presumed to be disabled. If the impairment is
5 not one conclusively presumed to be disabling, the evaluation proceeds to the fourth
6 step, which determines whether the impairment prevents plaintiff from performing
7 work which was performed in the past. If a plaintiff is able to perform previous work
8 that plaintiff is deemed not disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv),
9 416.920(a)(4)(iv). At this step, plaintiff's residual functional capacity (RFC) is
10 considered. If plaintiff cannot perform past relevant work, the fifth and final step in
11 the process determines whether plaintiff is able to perform other work in the national
12 economy in view of plaintiff's residual functional capacity, age, education and past
13 work experience. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); *Bowen v.*
14 *Yuckert*, 482 U.S. 137 (1987).

15 The initial burden of proof rests upon plaintiff to establish a *prima facie* case
16 of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir.
17 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden is
18 met once plaintiff establishes that a mental or physical impairment prevents the
19 performance of previous work. The burden then shifts, at step five, to the
20 Commissioner to show that (1) plaintiff can perform other substantial gainful

1 activity and (2) a “significant number of jobs exist in the national economy” which
2 plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984).

3 STANDARD OF REVIEW

4 Congress has provided a limited scope of judicial review of a Commissioner’s
5 decision. 42 U.S.C. § 405(g). A Court must uphold a Commissioner’s decision,
6 made through an ALJ, when the determination is not based on legal error and is
7 supported by substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir.
8 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). “The [Commissioner’s]
9 determination that a plaintiff is not disabled will be upheld if the findings of fact are
10 supported by substantial evidence.” *Delgado v. Heckler*, 722 F.2d 570, 572 (9th Cir.
11 1983)(citing 42 U.S.C. § 405(g)). Substantial evidence is more than a mere scintilla,
12 *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n 10 (9th Cir. 1975), but less than a
13 preponderance. *McAllister v. Sullivan*, 888 F.2d 599, 601-02 (9th Cir. 1989).
14 Substantial evidence “means such evidence as a reasonable mind might accept as
15 adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401
16 (1971)(citations omitted). “[S]uch inferences and conclusions as the [Commissioner]
17 may reasonably draw from the evidence” will also be upheld. *Mark v. Celebreeze*,
18 348 F.2d 289, 293 (9th Cir. 1965). On review, the Court considers the record as a
19 whole, not just the evidence supporting the decision of the Commissioner. *Weetman*
20 *v. Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989)(quoting *Kornock v. Harris*, 648 F.2d 525,

1 526 (9th Cir. 1980)).

2 It is the role of the trier of fact, not this Court, to resolve conflicts in evidence.
3 *Richardson*, 402 U.S. at 400. If evidence supports more than one rational
4 interpretation, the Court may not substitute its judgment for that of the
5 Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9th
6 Cir. 1984). Nevertheless, a decision supported by substantial evidence will still be
7 set aside if the proper legal standards were not applied in weighing the evidence and
8 making the decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d
9 432, 433 (9th Cir. 1987). Thus, if there is substantial evidence to support the
10 administrative findings, or if there is conflicting evidence that will support a finding
11 of either disability or nondisability, the finding of the Commissioner is conclusive.
12 *Sprague v. Bowen*, 812 F.2d 1226, 1229-30 (9th Cir. 1987).

13 **ALJ'S FINDINGS**

14 At step one, ALJ Palachuk found Snider did not work at substantial gainful
15 activity levels after onset (Tr. 22). At steps two and three, the ALJ found Snider
16 suffers from anxiety disorder, an impairment that is severe but does not meet or
17 medically equal a Listed impairment (Tr. 22-23). The ALJ assessed an RFC for a
18 full range of work at all exertional levels with nonexertional limitations (Tr. 24). At
19 step four, relying on the vocational expert's testimony, the ALJ found Snider can
20 perform his past work as a landscape laborer (Tr. 30). Alternatively, again relying

1 on the VE, the ALJ found at step five there are other jobs, such as laundry worker
2 and industrial cleaner, plaintiff can perform. Accordingly, the ALJ found Snider
3 was not disabled as defined by the Act (Tr. 31).

4 **ISSUES**

5 Snider alleges the ALJ erred when she weighed the evidence by failing to
6 credit the opinion of Gregory Charbonneau, Ed.D., and by giving too much credit to
7 the opinion of the testifying psychologist. ECF No. 14 at 9-11. The Commissioner
8 responds that because the ALJ's findings are factually supported and free of
9 harmful legal error, the court should affirm. ECF No. 16 at 2.

10 **DISCUSSION**

11 *A. Credibility*

12 Snider fails to challenge the ALJ's negative credibility assessment, meaning
13 any challenge is weighed on appeal. *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d
14 1219, 1226 n. 7 (9th Cir. 2009). The Court addresses it briefly because it bears on the
15 ALJ's assessment of the medical evidence.

16 When presented with conflicting medical opinions, the ALJ must determine
17 credibility and resolve the conflict. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d
18 1190, 1195 (9th Cir. 2004)(citation omitted). The ALJ's credibility findings must be
19 supported by specific cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th
20 Cir. 1990). As the Court has stated many times, absent affirmative evidence of

1 malingering, the ALJ's reasons for rejecting the claimant's testimony must be "clear
2 and convincing." *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995); *Garrison v.*
3 *Colvin*, 759 F.3d 995, 1015 n. 18 (9th Cir. 2014). Here, the ALJ found Snider less
4 than fully credible (Tr. 23, 25).

5 The ALJ considered Snider's criminal history, which includes seven felony
6 convictions and five periods of incarceration. While incarcerated he smuggled drugs
7 into the prison (Tr. 25, referring to Tr. 222). The ALJ notes this untruthfulness
8 diminishes plaintiff's credibility. The ALJ correctly relied on this factor because a
9 reputation for untruthfulness clearly diminishes credibility. *Thomas v. Barnhart*, 278
10 F.3d 947, 958 (9th Cir, 2002). The ALJ addressed Snider's one-time claim he
11 suffers hallucinations (Tr. 23, 26, referring to Tr. 261-62, 264). She contrasted this
12 with the many times he reported he suffers no hallucinations: Tr. 222 (no signs of
13 mental illness); 224 (denies has ever seen or heard things that others have not); Tr.
14 233 (negative for hallucinations); Tr. 240 (never hears voices); 244 (denied
15 hallucinations entirely); Tr. 247 (again denied hallucinations entirely).

16 The ALJ relied on plaintiff's treatment history (Tr. 26). While incarcerated he
17 did not request any mental health treatment (Tr. 230). The record shows he was
18 prescribed psychotropic medication, but this appears based on his descriptions of his
19 symptoms because on multiple occasions mental examinations were essentially
20 unremarkable and plaintiff is described as having no unusual anxiety. Plaintiff has

1 said he has good results when he takes prescribed medications consistently and has
2 problems when he does not. The ALJ correctly concluded limited treatment efforts
3 and needs, and symptoms controlled with medication, are inconsistent with allegedly
4 disabling mental impairments (Tr. 26, 213, 222-23, 225, 230, 235-36, 239, 243, 246,
5 250, 256, 261). The ALJ correctly relied on medical evidence that contradicts
6 plaintiff's claims when she found him less than fully credible.

7 *B. Dr. Charbonneau*

8 Gregory Charbonneau, Ed.D., examined Snider on February 7, 2014 (Tr. 261-
9 65). This examination was to determine if plaintiff qualified for public assistance
10 based on a mental disorder. The ALJ notes this is the only time during the relevant
11 period plaintiff was observed to have significant mental health symptoms, and it was
12 also the only time he claimed to have hallucinations and delusions (Tr. 27). The ALJ
13 observes a clear motive for secondary gain could be attributed to plaintiff's changed
14 claims and behavior. The ALJ may certainly consider motivation and the issue of
15 secondary gain in rejecting symptom testimony. *See Tidwell v. Apfel*, 161 F.3d 599,
16 602 (9th Cir. 1998); *Matney on Behalf of Matney v. Sullivan*, 981 F.2d 1016, 1020
17 (9th Cir. 1992). As the ALJ points out, Dr. Charbonneau's diagnosis of bipolar
18 disorder with psychotic features appears based solely on plaintiff's unreliable self-
19 report (Tr. 28-29, 262).

20 The ALJ gave little weight to Dr. Charbonneau's opinion, including that

1 plaintiff is severely limited in the ability to understand and remember very short and
2 simple instructions and perform activities within a schedule (Tr. 29 referring to Tr.
3 263). She notes this one-time examination could not provide a detailed, longitudinal
4 picture of plaintiff's impairments and limitations. The assessed limitations are also
5 unsupported by Dr. Charbonneau's examination results indicating plaintiff was fully
6 oriented; memory, concentration and fund of knowledge were intact and normal (Tr.
7 24, 29, referring to Tr. 264). Plaintiff alleges this was not a reason relied on by the
8 ALJ. ECF No. 17 at 2. Plaintiff is incorrect. See Tr. 29:

9 "... he was oriented to person, place, time and situation. The claimant's remote
10 memory and recent memory were intact. His immediate memory was described as
11 being good because he was able to remember 7 digits forward and 5 digits
12 backward. The claimant's fund of knowledge was within normal limits. He was
13 aware of current events and was able to name three large cities in the United States
14 and correctly identify 2/2 states that border Washington. The claimant's
15 concentration was within normal limits. He was able to correctly perform serial 7
16 subtractions and spell the word "world" forward and backward."

17 Tr. 29, citing Dr. Charbonneau at Tr. 264.

18 Likewise, other substantial evidence in the record does not support the degree
19 of limitation alleged. Snider admitted he gets his five children ready for school and
20 drops them off, showing he can follow a schedule (Tr. 262). He cooks often, usually

1 complex meals, which is inconsistent with a severe limitation in the ability to
2 remember and understand very short and simple instructions (Tr. 262).

3 The ALJ is correct. Dr. Charbonneau's check box opinions of plaintiff's
4 limitations are inconsistent with both the psychologist's own examination results and
5 other evidence of record, including plaintiff's admitted activities. The ALJ need not
6 accept the opinion of any doctor if the opinion is brief, conclusory and inadequately
7 supported by clinical findings. *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir.
8 2002).

9 Psychological expert Thomas McKnight, PH.D., reviewed the record. He
10 testified plaintiff has no severe impairments (Tr. 56).

11 The ALJ considered but did not fully accept this opinion (Tr. 29-30). She
12 found plaintiff suffers from anxiety, a severe impairment, and has two nonexertional
13 limitations: he cannot work with the general public and contact with co-workers is
14 limited to small groups, and no more than superficial contact (Tr. 30).

15 A testifying doctor's opinion is properly relied on as long other evidence in
16 the record supports those findings. *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th
17 Cir. 2001)(citation omitted). Here, the ALJ assessed greater limitations than
18 described by the testifying expert. The ALJ's limitations are consistent with the
19 evidence, including the lack of treatment and clear ability to function when
20 compliant with taking prescribed medications.

1 The ALJ's reasons for rejecting Dr. Charbonneau's contradicted opinion are
2 specific, legitimate and supported by the record. A check-box form is entitled to
3 little weight. *Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir. 1996). Opinions based on
4 unreliable self-reporting may be properly discounted. *Bayliss v. Andrews*, 427 F.3d
5 1211, 1216 (9th Cir. 2005). Any medical opinion that is brief, conclusory and
6 unsupported by clinical findings is properly discounted. *Bayliss*, 427 F.3d at 1216.

7 The ALJ is responsible for determining credibility, resolving conflicts in
8 medical testimony and resolving ambiguities. *Tommasetti v. Astrue*, 533 F.3d 1035,
9 1041-42 (9th Cir. 2008). The court will uphold the ALJ's conclusion when the
10 evidence is susceptible to more than one rational interpretation. *Burch v. Barnhart*,
11 400 F.3d 676, 679 (9th Cir. 2005).

12 The ALJ's determinations are supported by the record and free of harmful
13 legal error.

14 CONCLUSION

15 After review the Court finds the ALJ's decision is supported by substantial
16 evidence and free of harmful legal error.

17 IT IS ORDERED:

18 Defendant's motion for summary judgment, **ECF No. 16**, is **granted**.
19
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1 Plaintiff's motion for summary judgment, ECF No. 14, is denied.

2 The District Court Executive is directed to file this Order, provide copies to
3 counsel, enter judgment in favor of defendant and **CLOSE** the file.

4 DATED this 28th day of December, 2015.

5 S/ James P. Hutton

6 JAMES P. HUTTON
7 UNITED STATES MAGISTRATE JUDGE
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